IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. NO. 3753./2002

PETITIONER : Mariyan Fransis S/O Late Joseph Fransis, aged about 42 years, R/O at present C/O M.D. Bhalerao, Durgapara Santoshi Nagar, Raipur (C.G.)

P. R. No. 3744/02
Presented by Shri Malay Kumar Ghadei
dated 09.12.02

VERSUS

RESPONDENTS 1. State of Chhattisgarh Through Secretary, Department of Home Mantralya D.K.S. Bhavan, Raipur (C.G.)

2. Inspector General of Police Chhattisgarh Police Head-quarter, Raipur (C.G.)

3. The Superintendent of Police Raipur (C.G.)

9.12.02

Tested 9/9/04

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI MANDAMUS OR ANY OTHER SUITABLE ORDERS OR DIRECTIONS TO DO JUSTICE IN THE MATTER DETAIL OF THE PETITION :-

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4. The Union of India
Through - Secretary Department of
Personal, Public Grivances,
New Delhi.

5. The State of Madhya Pradesh
Through - Secretary Department of
Home and Police Affairs.
Bhopal (M.P.).

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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# आदेश पत्रक

मामला क्रमांक WP 2753/02 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**16-12-2005**

Shri M.K. Bhaduri, counsel for the petitioner.

Shri Sandeep Dubey, Govt. Advocate for the State of Chhattisgarh.

Heard.

By this petition under Article 226/227 of the Constitution of India, the petitioner has sought compassionate appointment.

Brief facts are that the father of the petitioner was Constable in the District Force at Raipur, who died on 11/10/1970 while in service. After his death, the petitioner was given appointment on the post of Boy Orderly on 3/4/1971. Thereafter, on attaining the age of majority he was discharged on 1/4/1979. After his discharge, the petitioner has not taken any steps for 23 years and straight-away filed the instant petition, which is highly belated. No reasonable explanation has been offered for such long delay.

It has to be remembered that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointments on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis.

In *Life Insurance Corporation of India vs. Asha Ramchhandra Ambekar (Mrs.) and another* reported in *(1994) 2 SCC 718*, it was pointed out that Courts cannot confer benediction impelled by sympathetic consideration to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments.

In the case of *Smt. Sushma Gosain and others vs. Union of India and others* reported in *(1989) 4 SCC 468* it was observed that in all claims of

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WP 2753/02

मामला क्रमांक ..... सन् 200

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| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित —2— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as an when such minor becomes a major he can be appointed without any time consciousness or limit.

The above view was reiterated in the cases of *Phool Wati (Smt.) vs. Union of India and Others* reported in *1991 Supp (2) SCC 689* and *Union of India and others vs. Bhagwan Singh* reported in *(1995) 6 SCC 476*.

In the case of *Director of Education (Secondary) and another vs. Pushpendra Kumar and others* reported in *(1998) 5 SCC 192* it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions, it cannot

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मामला क्रमांक WP 2753/02 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित —3— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

In the case of *Commissioner of Public Instructions and others vs. K.R. Vishwanath* reported in *JT 2005 (8) SC 33* also the Apex Court has taken the same view.

The Apex Court in the case of *National Hydroelectric Power Corporation and another vs. Nanak Chand and another* reported in *2004 AIR SCW 6339* has also held as under:

> "It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crises."

Having considered the facts and circumstances of the cases, material on record and in view of the law laid down by the Apex Court in the aforesaid cases, not a case for exercising extraordinary jurisdiction by this Court under Article 226/227 of the Constitution of India.

The petition fails and is accordingly dismissed.

**Sd/-**
**Fakhruddin**
**Judge**

H/Gowri

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